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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
) CC Docket No. 96-45
Federal-State Joint Board on)
Universal Service)
)

**COMMENTS OF
CC COMMUNICATIONS**

By: Mark Feest
General Counsel
CC Communications

INTRODUCTION

CC Communications¹ appreciates the opportunity to participate in this process as the Federal Communications Commission (FCC or Commission) seeks to implement new and unique methods aimed at fulfilling Congress' universal service mandates under the Telecommunications Act of 1996 (the "Act"). The FCC has stated that its goal in this proceeding is to (1) preserve and advance universal service, (2) maintain competitive neutrality, and (3) ensure long term sustainability of the fund.² The comments submitted by CC Communications will focus on those aspects of the joint boards recommendations that either tend to promote or detract from the likelihood that these goals are achieved.

Albeit not explicitly expressed, it does appear that ensuring the long-term sustainability of the fund is at the forefront of the joint board's recommendation, and, in fact, the other two goals can only be obtained if the fund is sustained. Thus, one should not find it unreasonable or inefficient that any regime designed to ensure goals (1) and (2) is subject to the requirements of goal (3). To that end it appears that the joint board is promoting a regime that is partial to ensuring long term sustainability in that it purportedly ensures such through reduction of eligible lines at the potential cost to goals one and two.

It appears that the Joint Board's recommendation suggests to some extent that one factor in ensuring long term sustainability of the fund is ensuring that proper economic signals are sent that trigger CETC's entry into markets.³ Tied closely to this is an underlying assumption that not only entry, but also the ongoing business plan, should be based upon the market rather than gaming the system. It is CC Communications' position that the proposed "primary line" regime

¹ Churchill County Telephone, DBA CC Communications has been providing communications services in rural northern Nevada since 1889. The company currently provides both wireline and wireless telecommunications, local and long distance, DSL, and cable.

² *In the Matter of Federal-Joint Board on Universal Service*, NPRM, CC Docket 96-45 para. 32.

³ *Id.* at para. 100

1 creates an environment that is even more susceptible to inappropriate economic signals, while
2 providing ample motivation for “gaming the system”.

3 In addition to creating new and even more perverse incentives based on the regulatory
4 regime instead of the market, CC Communications is concerned that the proposed regime
5 inappropriately infringes upon state commission authority and fails to meet the Act’s sufficiency
6 mandate. Moreover, although CC Communications supports the Joint Board’s recommendations
7 for a more stringent ETC Designation Process, we question the Board’s conclusions as to the
8 effect such measures will have on the number of ETC applications.

9 Utilizing the headings designated for comment by the commission, these comments
10 intend to identify and discuss the following points:

- 11 a. Adoption of federal guidelines for ETC designation will help to ensure universal
12 service goals adhere to the intent of the Act, however, such guidelines will not
13 lead to a significant reduction in the number of applicants.
14
- 15 b. Adopting a primary line regime is a de facto elimination of a significant portion of
16 the authority conferred upon states in section 214 and will put section 214 at odds
17 with section 254.
18
- 19 c. A primary line regime will create new opportunities for gaming the system and
20 encourage carriers to spend more time and resources capturing the “primary line”
21 designation than providing service.
22

23 **ETC DESIGNATION PROCESS**

24
25 CC Communications agrees with the Joint Board that there is a need for a consistent and
26 predictable application process among states, and that the implementation of federal guidelines
27 will help to meet that goal. Further, in order to send appropriate economic signals, and to prevent
28 arbitrage, states must be encouraged to place greater emphasis on the “public interest”
29 requirement under section 214. Of course, whatever guidelines are established should be

1 followed by both states and the FCC when performing their respective functions under sections
2 214(e)(2) and 214(e)(6).

3 Adoption of federal guidelines for ETC designation will help to ensure universal service
4 goals adhere to the intent of the Act, however, such guidelines will not lead to a significant
5 reduction in the number of applicants. CC Communications believes that in the past regulators
6 have allowed the need for Universal Service to take a backseat to the goal of fostering
7 competition. While we recognize that these are dual goals of the Act, the universal service fund
8 should not be used to create competition while placing universal service at risk. The lack of
9 minimum standards and guidance designed to allow state commissions to identify “public
10 interest” has resulted in too many CETC’s applications being granted in an effort to ensure
11 competition. This situation has identified the need for greater scrutiny on the part of state
12 commissions (and the FCC when serving in this capacity) when reviewing ETC applications in
13 areas served by rural ILECs. Without minimum federal guidelines some state commissions have
14 acted consistently with 47 U.S.C. § 214(e)(2), while others have seemingly given no
15 consideration to the “public interest” requirement. Notwithstanding the foregoing support of
16 minimum federal guidelines, CC Communications is also cognizant of the authority granted to
17 state commissions by Congress, which leads to some trepidation regarding any regulations that
18 erode the full and legitimate state commission authority.

19 While the utilization of federal guidelines that require all recipients are “fully qualified”
20 is an admirable goal that will ensure that (1) each recipient is held to the same standards, thus
21 somewhat leveling the playing field, and (2) that customers receive the type and level of services
22 congress intended by adoption of the universal service provisions in the 1996 Act, a reduction in
23 the number of ETC applications will not necessarily follow. The Joint Board’s assertion that

1 such “guidelines should improve the long-term sustainability of the universal service fund, as
2 only fully qualified carriers are capable of, and committed to, providing universal service would
3 be able to receive support,”⁴ appears to be unfounded. One must assume that the Joint Board is
4 suggesting that (1) the fund is growing due to unqualified carriers being designated at CETC’s
5 and (2) by requiring such carriers to be qualified, they will choose not to, or be unable to,
6 successfully apply for ETC designation. Such an assertion is questionable at best. We do not
7 believe that ensuring that each recipient of universal service support is “fully qualified” will,
8 alone, have a significant effect on the sustainability of the fund. This conclusion all but ignores
9 the economic advantage provided to wireless carriers that gain CETC status and are paid based
10 on the ILEC’s cost rather than their own. The Joint Board has placed the blame for the numerous
11 CETC applications solely on a failure to ensure these applicant’s are “fully qualified”, and
12 ignored the economic motivation created by paying out USF in excess of the CETC’s actual cost
13 to provide service.

14 In fact, if one accepts the assertions that wireless CETCs currently receive support at,
15 near, or in excess of, actual costs, and then proceed to bill customers, it is likely that such
16 combined revenues will provide ample capital and motivation to meet the additional standards
17 imposed to ensure all recipients are “fully qualified.” Thus, while these new requirements of
18 “fully qualified” will result in the service quality congress intended to support through USF,⁵ it
19 will have little effect on the number of carriers applying for ETC status.

20 The breakdown in the Joint Board’s reasoning stems from a fundamental
21 misidentification of the cause for the increase in the fund. The pending exponential growth to the
22 fund has not been triggered by the designation of carriers that are not “fully qualified”. While

⁴ *Id.* at para. 33

⁵ The type and level of service that rural ILECs receiving USF have provided all along.

1 this has exacerbated the problem, the root cause is the concerted effort to have the goal of
2 competition outweigh the goal of universal service. This has lead to (1) a misguided definition of
3 nondiscriminatory, and (2) a failure to implement rules that genuinely ensure “public interest”
4 has meaning. Therefore, while CC Communications supports ensuring all applicants are “fully
5 qualified,” we suggest that the fund will only be controlled by ensuring the “public interest” is
6 served, and this begins by discarding the fallacy that the Act mandates multiple ETC’s in rural
7 areas.

8 SCOPE OF SUPPORT

9 The joint board’s conclusions as to the value and propriety of limiting the provision of
10 high-cost support to a single connection that provides a subscriber access to the public telephone
11 network are flawed. The proposal fails to recognize the need for at least one system ready and
12 willing to serve the entire community, within a respective study area, with the type and level of
13 service mandated by the Act. The proposal will not provide sufficient funding to achieve the
14 mandate of the Act because it fails to treat the rural provider’s network as a system in which each
15 part is not as great (and useful) as the whole. The joint board concludes that a single connection
16 regime will send appropriate economic signals to competitors causing them to only enter a
17 market for market based reasons. Although one must wonder if a new market where the provider
18 is spending more time and effort attempting to get the subscriber to designate her wireless phone
19 “primary,” than it is serving the customer, is really wrought with market efficiencies.

20 The Commission “seek[s] comment on the Joint Board’s recommendation to limit the
21 provision of high-cost support to **a single connection that provides a subscriber access to the**
22 **public telephone network.**” The language in bold belies the problem with this whole approach.
23 A single connection does not, and cannot, provide a subscriber access to the PSTN. Multiple

connections, in the aggregate, create a system capable of providing the subscriber access to the PSTN. This is a concept that underlies the adoption of the universal regime in that it was recognized that a system that everyone has access to has a greater value to all. When considering the role of a provider of last resort, the system cannot be broken up into individual lines for recovery of USF if the entire system is to continue to be run effectively. Admittedly, a LEC could not stay in business if there was only one customer. The smaller the system (or greater the subsidy per line) the more detrimental the loss of one line, or one portion of the fund payment, is. Each line taken away (if even just symbolically as not being designated “primary line”) reduces the ability of the system to sustain itself, eventually causing the system to deteriorate to the point no subscriber has access to the PSTN.

Inconsistencies with the Act

The Joint Board’s proposal is at odds with 47 U.S.C. § 254(e) in that the law requires that “A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” Under the “primary line” regime such a requirement may be near impossible to meet. If the carrier does not immediately start collecting actual cost for any non – “primary line” connections, the carrier will arguably be violating the Act. When one considers that some rural carriers have actual costs in excess of \$300 per month, it would seem impossible to collect actual costs from customers (even at a more reasonable \$100.00 per month per line). Thus, rural ILECs will either be required to cease offering non- “primary lines” at a reasonable price, or utilize funds for non-supported service. Obviously the latter is not acceptable. The Commission must decide if the former is. This problem is exacerbated by the fact that designation of which line is primary may create potential 254(e) violations on a random basis.

Methodology for designating a “primary line”

The single line connection regime requires some methodology for designating the “primary line.” CC Communications would suggest that if such a regime were adopted, the methodology for designating what line is “primary” will be the greatest challenge. Any methodology selected will immediately become the target of new and ingenious means of exploitation and undoubtedly result in investment and pricing decisions being based on acquiring “primary line” designation. One oft cited potential methodology is to allow the customer to designate the “primary line”, while others will certainly suggest that a method based on quantity and/or quality of use be utilized. In either scenario, the opportunity, and I dare say the economic need, to game the system will be ripe.

Beginning by assuming that a methodology other than random customer designation is utilized, it does not take long to recognize that the value of having one’s own company line designated as “primary” is at least as great as making money off the provision of service. One obvious methodology for designating “primary line” is Minutes of Use. Simply put, in an area with an ILEC ETC and a wireless CETC, we simply look at which line the single customer uses the most. Customer A has wireless and wireline service, with the wireless number having 500 MOUs and the wireline number getting 300 MOUs. Thus, the wireless is designated “primary” and collects USF.

The two glaring problems are that 1) the provider’s are incented to capture MOUs even to the point of uneconomic marketing based on a calculation of USF gained, and 2) going off MOUs does not fully take into account the total value of the service. It is likely that a customer with a bucket of night and weekend wireless minutes will utilize the wireless carrier’s minutes at a greater rate than the wireline carrier’s minutes, but those minutes will be discretionary use and

1 not the type of use that is at the core of the universal service mandate. Attributing the “primary
2 line” to the wireless carrier in such a case will ignore the most fundamental reason that all
3 Americans should have an access to a telephone. That fundamental reason is identified by the
4 requirement that an ETC provide toll blocking and is that all Americans should have a telephone
5 available so at a minimum they can make necessary calls. In addition to who is called, necessary
6 calls include those made during emergencies such as E911 or calls made in times of power
7 outages. While one carrier may consistently capture more MOU’s in a customer’s home, it may
8 not have the type and level of service that makes it “primary”.

9 The second most likely method of determining “primary line” is allowing the customer to
10 make the designation. Without being too redundant, this option may epitomize the premise of
11 perverse incentives to enter a market as well as make decisions on how the carrier spends its
12 revenues anything but market based. The Joint Board attempts to justify the “single connection”
13 approach by stating that such a regime would “send more appropriate entry signals in rural and
14 high-cost areas.” One would hope that such a statement, as erroneous as it is, indicates that the
15 Joint-Board accepts the assertions of OPASTCO and others on the point that competitors “are
16 seeking ETC designation based on perverse incentives created by current rules.” Unfortunately, a
17 modification of the rules in order to support only a single connection would only create
18 additional perverse incentives for entering markets, marketing services, and pricing services. The
19 Joint-Board’s assertion that supporting only a single connection would provide Competitive
20 ETCs to “have incentives to enter rural and high-cost areas only where doing so makes rational
21 business sense under a model assuming incremental support only for subscribers captured from,
22 or unserved by, the incumbent LEC”, both ignores the Joint-Board’s own recommended rules
23 and underestimates the value of ETC funds and the opportunity to game this “new” regime.

1 The Joint-Board’s recommended rules do not require the competitive ETC to actually
2 capture subscribers from the ILEC. Rather, it is only required that the subscriber somehow be
3 attributed to the Competitive ETC under the primary line designation (either designated by the
4 customer or by some other easily manipulated methodology). And, even if it did require that the
5 subscriber disconnect from the ILEC, the method and incentive to game the system would
6 remain the same. Decisions to deploy service would be based on the ability to gain “primary
7 line” designation rather than the market. Thus, the whole intent of the Joint Board will not be
8 achieved through this regime.

9 **Impact on State Authority**

10 Adopting a primary line regime is a de facto elimination of a significant portion of the
11 authority conferred upon states in section 214 and will put section 214 at odds with section 254.
12 While the FCC has authority to set guidelines for designating a carrier as an ETC, it does not
13 have authority to prevent carriers, who have been duly designated ETC’s, to collect USF.
14 As such, the proposal by the Joint Board is a de facto stripping of State Authority under 47 USC
15 214(e) and may overstep the commission’s authority.

16 47 USC §214(e)(1) provides in relevant part “A common carrier designated as an eligible
17 telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal
18 service support in accordance with section 254 and shall, throughout the service area for which
19 the designation is received”. Thereafter, 47 USC §214(e)(2) vests the authority to designate an
20 ETC in the State Commission. The law provides the State authority to designate ETC’s and
21 thereafter the ETC is eligible to receive USF, and section 214 is specific that ETC designation is
22 for “throughout the service area.” Authority is stripped from the state if that “service area” for
23 which the ETC is eligible to receive USF is changed by the FCC rules that pick and choose what

1 subscribers in the service area reap the benefits of designation under 47 USC 214. The proposed
2 rule eliminates the purpose of the authority from the State because designation, without receipt
3 of funds, has no value. Thus, the proposal may be inconsistent with the Act.

4 Further, the proposed rules also create a de facto re-designation of service area, an
5 authority held by States, not the FCC. While the FCC has the authority to propagate rules as to
6 what “public interest” means, it does not have authority change the “service area designated by
7 the State commission,” nor does it have authority to eliminate the state authority to find whether
8 or not a carrier meets the guidelines and law as to be designated an ETC, however, eliminating
9 the full benefits of what designation as an ETC entails does just that. Looking at the Act, we see
10 that 47 U.S.C. §254 only talks about defining services that are eligible to be supported,
11 indicating that breaking up the network for purposes of USF is inconsistent with the Act. This is
12 further consistent with 47 U.S.C. §214(e)(4), which refers to designation in an area, not
13 designation for lines or customers.

14 Nevertheless, the proposed rule change seems to act as if the commission is
15 differentiating between “primary line” and “secondary line” as if they are separate services. This
16 begs the question of whether or not the Joint Board is asserting that the new “primary line”
17 designation is an “alteration” under 254 (c)(2). If so, we would disagree that “primary line” non-
18 primary line are different services. There is no difference in quality, in fact the ILEC is bound to
19 a minimum standard of quality. Does the commission suggest that it will create two separate
20 “services”, one “primary line” and one non-“primary line” the latter requiring a lower service
21 quality. If these are in fact the same services, within the same service area, then it should be of
22 concern that the commission appears to undermine the designation made the state commission.

1 Proposals intended to protect rural ILEC interests

2 The Joint Board has provided three methodologies intended to address the network
3 interests of rural ILECs affected by the adoption of a “primary line” regime.⁶ Based on the needs
4 to (1) eliminate inappropriate economic signals and (2) support the networks of rural ILECs, the
5 hold harmless proposal is the only acceptable alternative.

6 The restatement proposal essentially creates greater perverse incentives for new entrants
7 by increasing the support per line that a CETC would receive based on the incumbent's costs. As
8 these costs already do not reflect those incurred by new entrants that are not providers of last
9 resort and not required to maintain an entire network, the increased per line support would be a
0 greater windfall resulting in deployment decisions being based on cost per line received from the
1 fund rather than the market.

2 The lump sum proposal would do nothing to eliminate the already existing perverse
3 incentive for deployment, however, it would not increase such inappropriate economic signals.
4 However, as the rural ILEC's continued support and ability to maintain the network as required
5 would largely hinge largely upon capturing/maintaining "primary lines," the flaws in the
6 methodology of attributing "primary lines" to a specific carrier would result in a slower
7 (compared to the restatement proposal) degradation of the provider of last resorts network. As
8 such, the goals of universal service would be jeopardized.

19 The hold harmless proposal is the only alternative that would not immediately put the
20 network of the rural provider of last resort in jeopardy. As per-line support would not be capped,
21 the network would appear to be able to continue to provide the service type and level that is
22 mandated by the Act.

OTHER ISSUES

⁶ Restatement, lump sum payment, and hold harmless.

The commission also sought comments on treatment of businesses with multiple connections. On this issue CC Communications would suggest that the commission look to its recent NPRM on outage reporting and recognize that consistency in logic necessitates that if multiple business lines are to be counted separately in the case of outage reporting, they must be counted separately for distribution of universal service funds. These lines are either separate and distinct, or they are not.

CONCLUSION

While CC Communications is extremely supportive of the Joint Boards recommendation for more stringent standards and minimum federal guidelines for use during the ETC designation process, we would caution the commission not accept the underlying assumption that it is appropriate to utilize the universal service fund to promote competition at the cost of universal service. The Joint Board's recommendations regarding "primary line" designation places the burden of controlling growth fund on the very networks needed to actually provide universal service as intended by the Act. As a whole, this proposal fails to meet the sufficiency mandate of the Act and possibly infringes upon the state commission authority granted by the Act, rendering the new ETC designation process moot. For without the right to receive funds for the network, ETC designation for a rural provider of last resort has little value.

RESPECTFULLY SUBMITTED This 6th day of August, 2004.

/S/ Mark A. Feest
Mark Feest, General Counsel
CC Communications